APPENDIX

Extracts from
World War Adjusted Compensation Act Constituting the Act of May 19, 1924, c. 157, Secs. 501, 502, as amended, 38 U. S. C. 620-649

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Sec. 620—The decisions of the Secretary of War, the Secretary of the Navy, and the Administrator, on all matters within their respective jurisdictions under the provisions of this chapter (except the duties vested in them by Part VII of this chapter) shall be final and conclusive.

Act of July 3, 1926, c. 751, sec. 4(b), 44 Stat. 828, as amended by Act of July 3, 1930, c. 863, sec. 2, 46 Stat. 1016, which substituted "Administrator" for "Director".

Sec. 641—The Director upon certification from the Secretary of War * * * is directed to issue without cost to the veteran designated therein, a non-participating adjusted service certificate * * *. The veteran shall name the beneficiary of the certificate and may from time to time, with the approval of the Director, change such beneficiary. The amount of the face value of the certificate (except as provided in subdivisions (c), (d), (e) and (f) of sec. 642 of this title) shall be payable out of the fund created by sec. 645 of this title (1) to the veteran twenty years after the date of the certificate, or (2) upon the death of the veteran prior to the expiration of such twenty-year period, to the beneficiary named;

Act of May 19, 1924, c. 157, sec. 501, 43 Stat. 125.

Sec. 642(a)—A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provision of this sections.

Pars. (b) ~~and~~ to (h) are incorporated into the certificate and appear in the record, pp. 16-21, as sec. 502(b) to (h) of the original Act of May 19, 1924.

(i) The director of the United States Veterans' Bureau is authorized, through such officers and at such regional offices, sub offices, and hospitals of the United States Veterans' Bureau as he may designate, * * * to make loans to veterans upon their adjusted service certificates in the same amounts and upon the same terms and conditions as are applicable in the case of loans made under this section by a bank, * * *.

(j) For the purpose of enabling the Director to make such loans out of the United States Government Life Insurance Fund, the Secretary of the Treasury is authorized to loan not exceeding $25,000,000 to such fund * * *.

Subdivisions (i) and (j) were added to the Act of May 19, 1924, by Act of March 3, 1927, c. 359, sec. 1, 44 Stat. 1389.

Sec. 643—No certificate issued or right conferred under the provisions of Part V of this Chapter shall, except as provided in section 642 of this title, be negotiable or assignable or serve as security for a loan. Any negotiation, assignment, or loan made in violation of any provision of this section shall be held void. If any person is named as beneficiary by the veteran as a consideration for the making of a loan to the veteran by such person or any other person, such naming shall be void. Any person who accepts an assignment of a certificate or receives a certificate as security for a loan contrary to the provisions of this Part V of this chapter, or who makes a loan to a veteran in consideration of the naming by the veteran of such person or any other person as beneficiary, shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $500 or imprisoned not more than one year, or both.

First two sentences constitute original Act of May 19, 1924, c. 157, sec. 503, 43 Stat. 128. Balance added by Act of July 3, 1926, c. 751, sec. 5, 44 Stat. 828, concurrently with sec. 649 authorizing duplicate certificates.

Sec. 649—Whenever it appears to the Administrator of Veterans' Affairs, by evidence clear and satisfactory

to him, that any adjusted service certificate has, without bad faith upon the part of the person entitled to payment thereon, been lost or destroyed, and such adjusted service certificate is identified by number and description, he shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof of like value in all respects to the original certificate and so marked as to show the original number of the certificate lost or destroyed and the date thereof. The lawful holder of such certificate who makes application for a duplicate shall file in the Veterans' Administration a bond in a penal sum of the face value of such lost or destroyed certificate, with two good and sufficient sureties, residents of the United States, to be approved by the Administrator, with condition to indemnify and save harmless the United States from any claim upon such lost or destroyed certificate; except that a duplicate certificate shall be issued without the requirement of a bond when it is shown to the satisfaction of the Administrator that the original certificate, (1) before delivery to the veteran, has been lost, destroyed, wholly or in part, or so defaced as to impair its value, and (2) after delivery to the veteran, has, without bad faith upon the part of the person entitled to payment thereon, been partially destroyed or defaced so as to impair its value, is capable of identification, and is surrendered by such person to the Veterans' Administration.

Added by Act of July 3, 1926, c. 751, sec. 13, 44 Stat. 830. The first exception dispensing with a bond was added by Act of March 3, 1927, c. 359, sec. 2, 44 Stat. 1390, concurrently with pars. (i) and (j) to sec. 642 authorizing government loans. Exception (2) was added by Act of March 4, 1929, c. 703, sec. 2, 45 Stat. 1561, and the original text appropriately revised.

By a general Act of July 3, 1930 (c. 863, sec. 2, 46 Stat. 1016) the office of "Director of the United States Veterans' Bureau" was changed to "Administrator of Veterans' Affairs" in this and all similar statutes affecting veterans' affairs.

Opinion of Circuit Court in *United States* v. *Hartford Accident & Indemnity Company*, 117 Fed. (2d) 503, Referred to in the Opinion in the Case at Bar

CLARK, *Circuit Judge.*

In 1927, Frank K. Taylor, a veteran, applied for a duplicate of his adjusted service certificate, on the ground that the original had been lost, and, as required by statute, 38 U. S. C. A. §649, gave a bond, with the defendant herein as surety, to protect the plaintiff against claims on the original certificate. After the duplicate had been issued, Taylor proceeded to borrow on it from plaintiff on four different occasions from 1927 to 1931. He then obtained final payment of the balance in July, 1936. Meanwhile, in 1930 and 1931, through other field offices of the Veterans' Administration, he procured loans from plaintiff on his original certificate, and in June, 1936, effected final settlement upon it. Not surprisingly his whereabouts is now unknown. Plaintiff made demand on defendant for reimbursement and brought this action when defendant refused payment. Trial was had upon stipulated facts, as a result of which the district court denied recovery because no intention was expressed in unequivocal terms in the bond to indemnify the obligee against its own negligence. D. C. Conn., 33 F. Supp. 859.

The statute cited requires a bond, "with condition to indemnify and save harmless the United States from any claim upon such lost or destroyed certificate." The bond itself is stated to be a "Bond of Indemnity to the United States * * * To secure the United States against payment of any sum whatsoever on account of the issuance of" the adjusted service certificate in question, identified by number, amount, and the veteran's name. The recitals in the bond refer to the occasion for its execution upon Taylor's loss of his original certificate and state that it is required by the Director of the United States Veterans' Bureau "by virtue of the World War Adjusted Compensation Act." From the condition of the bond, it appears

that the obligors agree to repay plaintiff for sums it has paid "on account of the establishment of any valid adverse claim" to the proceeds of the original certificate and also to save plaintiff harmless from "any claim" and from "all damage, loss, costs, charges, and expenses" which plaintiff may sustain "or be liable for in consequence of any such claim," and "any and all costs and expenses incurred in connection therewith."

This inclusive provision in terms covers not only valid claims, but also any claims whatsoever, and any and all costs incurred in connection with any claims. Plaintiff suggests that the form of the bond thus including alternatively any valid claim and then any claim was adopted to guard against the contingency, among others, that an approval by the Veterans' Administration under 38 U. S. C. A. §641 of the designation of different beneficiaries under the two certificates might be held final and binding upon the Government under 38 U. S. C. A. §620. (*Butte, A. & P. Ry.* v. *United States,* 290 U. S. 127, 54 S. Ct. 108, and *United States* v. *Great Northern Ry.,* 287 U. S. 144, 53 S. Ct. 28, had so held as to certain determinations of the Interstate Commerce Commission.) Under the view more recently stated in *United States* v. *Bentley,* 2 Cir., 107 F. 2d 382, that the Veterans' Administration may correct errors in its determinations, this provision would no longer be necessary. But, whatever the history of the provision, the intent to cover different forms of liability is so clear that we see no justification for restricting it by reading into it something not there expressed. Particularly is this so when the claimed construction apparently takes away all substantial effect of the bond.

Defendant's theory is that the later language of the condition merely amplifies the first provision and therefore refers only to a valid adverse claim. In the companion case herewith, *United States* v. *Continental Casualty Co.,* D. C. S. D. N. Y., 33 F. Supp. 65, this day reversed in 2 Cir., 117 F. 2d 506, the court accepted that

view, although the court herein rejected it for the view that the obligee's negligence was a bar. The arguments of defendants before us in both cases apparently tend to favor the former theory; these diversities of view perhaps illustrate the difficulties of rationalizing a restriction on the broad language of the bonds. A further difficulty arises because of the necessary concession that costs incurred by plaintiff in contesting an invalid claim are recoverable. Such a construction requires a discrimination in that the word "claim" used in the alternative part of the condition carries two distinct and different meanings.

To meet the point that the interpretation of the bonds made below leaves it practically without effect, defendant asserts that a bank which has made a loan with a certificate as security, as provided in 38 U. S. C. A. §642, may recover upon that certificate, even though it had already been cancelled. But we think the legal basis of that argument doubtful, and its persuasive force in any event limited. The statute, 38 U. S. C. A. §643, provides that no certificate shall "be negotiable or assignable or serve as security for a loan," except as provided in §642, and that "any negotiation, assignment, or loan made in violation of any provision of this section shall be held void." Thus, only a limited assignability at most is granted. Assignability under §642 to secure a bank loan would exist only to the extent required to subserve the purposes of that section of the statute. There is nothing in the section which requires negotiability for an original certificate, which has been cancelled upon the issuance of a duplicate. Moreover, the Administrator has discretion whether he shall redeem the certificate from the bank, but is not required to do so. §642(c). Presumably he will not exercise such discretion if the security to which he looks for the payment of losses, namely, the surety bond, fails to provide it. But even if this view of the statute is not correct, the fact that the bond may afford some protection to a

bank under the circumstances, we think, is not sufficient reason to restrict its coverage in other circumstances at least as important to the obligee.

It is further contended that the bond as thus construed exceeds the coverage required by the statute under which it is given. A bond given pursuant to a statute should naturally be construed to provide the coverage which the legislature has required as a condition of the right or relief which the statute gives. *Hill* v. *American Surety Co.*, 200 U. S. 197, 205, 26 S. Ct. 168; *United States* v. *Hamilton*, 7 Cir., 96 F. 2d 878, 117 A. L. R. 446. We do not see why this should prevent the parties from making additional agreements if they choose. But be that as it may, we are not impressed with the contention that "any claim upon such lost or destroyed certificate" means only a *valid* claim *pursuant* to the certificate. That seems to us a strained and unnatural construction of the language; more naturally it would mean that the United States should be "saved harmless" "from any claim" made against it upon the basis of, or having as its subject-matter, the lost certificate.

The cases relied upon by the district court, such as *Southern Bell Telephone & Telegraph Co.* v. *Mayor and Board of Aldermen*, 5 Cir., 74 F. 2d 983, and *United States* v. *Wallace*, 9 Cir., 18 F. 2d 20, to support the conclusion that the obligee's own negligence bars recovery depend on circumstances too different to be persuasive here. They may be matched by other decisions upholding wide coverage, particularly on bonds given to the Government. *Hart* v. *United States*, 95 U. S. 316, 318; *Jones* v. *United States*, 18 Wall. (85 U. S.) 662; *United States* v. *Witten*, 143 U. S. 76, 12 S. Ct. 372; *cf. City of Cleveland* v. *Baltimore & O. R. Co.*, 6 Cir., 71 F. 2d 89, 91. In general the Government is not held responsible for even the mistake of its agents or officers, not to speak of their negligence or misconduct, in making unauthorized payments of public moneys, *United States* v. *Bentley, supra; Hunter* v. *United States*, 5 Pet.

(30 U. S.) 173, 187-188; *Wisconsin Cent. R. Co.* v. *United States,* 164 U. S. 190, 207-212; and a contract containing the suggested limitation on the protection afforded the Government would seem unnatural and unusual. This was a business agreement made for hire by a corporate surety, which can hardly claim the benefit of unusually favorable interpretation of its contract. Whether *Security-First Nat. Bank* v. *United States,* 9 Cir., 103 F. 2d 188, is to be followed or not, its circumstances were quite different. There the Veterans' Administration had issued checks to a person purporting to be the veteran, though informed of the veteran's death, and the court held that the Government was estopped from questioning the genuineness of the impostor's endorsement. The case did not deal with a contract of indemnity seemingly intended to cover the very circumstances of imposture here presented.

Reversed; judgment directed for plaintiff.